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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,466	02/15/2001	Nigel Victor Spurr	60,130-1001	2824
26096	7590	10/07/2005	EXAMINER	
CARLSON, GASKEY & OLDS, P.C.			JOYCE, WILLIAM C	
400 WEST MAPLE ROAD			ART UNIT	
SUITE 350			PAPER NUMBER	
BIRMINGHAM, MI 48009			3682	

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

*He*

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

9/784,466

Applicant(s)

SPURR, NIGEL VICTOR

Examiner

William C. Joyce

Art Unit

3682

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_

*William C. Joyce 10/9/05*  
**WILLIAM C. JOYCE  
PRIMARY EXAMINER**

Continuation of 11. does NOT place the application in condition for allowance because: Examiner respectfully disagrees with applicants argument that the written description of the invention would enable one in the art to make and use the unillustrated embodiment of the device recited in claims 16 and 21. Section 35 USC 112, first paragraph, states that "the specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention." The requirements of section 35 USC 112, first paragraph, have not been met because applicant has failed to clearly and concisely disclose the claimed species, including failing to illustrate the claimed species

For example, it is unclear how the output member (50) is connected to the worm wheel (24). Is the output member fixed to the gear wheel by a pin connection, a weld connection, or some other type of undisclosed connection? Further, the written disclosure fails to clearly define the axis on which the output member rotates. Another example, it is unclear how the output member would be shaped such that the perpendicularly acting detent arrangement can control the movement of a rotatable output member (50). As is demonstrated, the written disclosure fails to clearly define the non-illustrated embodiment which applicant defines in claim 16.

Applicant's representative argues the limitations of claim 16 are illustrated by the non-elected species of Figure 3. This argument does not overcome the rejection based on 35 USC 112, 1st, because the rejection is directed to the elected species of Figures 1-2. More clearly, the written description (page 5, lines 12+) does not clearly describe how output member (50) of the elected species rotates and Figures 1-2 fail to clearly illustrate the structural arrangement of output component (50) so as to allow a rotational movement. In the event applicant intends to pursue the non-elected species of Figure 3, it is recommended that applicant file a divisional application.

Accordingly, the claims stand rejected as described in the Final Office Action.